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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MITCHELL PAUL LEVAR,

Defendant and Appellant.

E049336

(Super.Ct.No. FVI015020)

OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Tomberlin,
Judge. Affirmed.

William D. Farber, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Mitchell Paul Levar appeals the trial court's denial of his motion for relief from the lifetime sex offender registration requirements under Penal Code section 290.¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant pled guilty on August 7, 2002, to oral copulation of a minor. (§ 288a, subd. (b).) The victim of the offense was defendant's 16-year-old daughter. When interviewed by a sheriff's detective, the victim reported defendant penetrated her vagina with his tongue. Defendant and the victim had been drinking together at the time, and defendant supplied the alcohol. The victim also reported other prior acts of sexual abuse by defendant.

When defendant was first interviewed at the police station, he denied his daughter's allegations. However, he was given a polygraph examination and was advised he had been untruthful. He then admitted drinking with his daughter and described two different incidents when he abused his daughter sexually. The first incident involved oral penetration of her vagina with his tongue. In the second incident, defendant kissed his daughter's vaginal lips while she was lying on the couch in their living room.

On August 30, 2002, defendant was sentenced to and served three years in state prison for the offense. He successfully completed parole and has been registering as a sex offender pursuant to section 290, subdivision (a)(1)(A).

¹ All further statutory references are to the Penal Code.

On July 27, 2009, defendant filed a motion for relief from the lifetime sex offender registration requirements based on our Supreme Court's decision in *People v. Hofsheier* (2006) 37 Cal.4th 1185. The People opposed the motion. On equal protection grounds, our Supreme Court in *Hofsheier* invalidated the mandatory lifetime registration requirement under section 290 for persons convicted of section 288a, subdivision (b)(1), voluntary oral copulation with 16- or 17-year-old minors. (*Hofsheier*, at p. 1207.) The Supreme Court found an equal protection violation, because lifetime registration was not required under section 290 for the similarly situated category of persons convicted of voluntary sexual intercourse with a minor in the same age group (§ 261.5), and there was no rational basis for this distinction. (*Hofsheier*, at p. 1207.) However, the Supreme Court also concluded that persons convicted of voluntary oral copulation with a 16- or 17-year-old minor under section 288a, subdivision (b)(1), could still be subject to discretionary lifetime registration under section 290, subdivision (a)(2)(E). (*Hofsheier*, at pp. 1208-1209.) Under section 290, subdivision (a)(2)(E), a trial court has discretion "to order lifetime registration as to any offender even if the defendant was not convicted of a sexual offense if the court finds that 'the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.' " (*Hofsheier*, at p. 1208.) Before imposing lifetime registration requirements under section 290, subdivision (a)(2)(E), the court must "weigh the reasons for and against registration in each particular case" and state its reasons for requiring lifetime registration on the record. (*Hofsheier*, at p. 1197.)

On September 15, 2009, the trial court held a hearing on defendant's motion for relief from the lifetime registration requirements. Based on a number of factors considered in detail on the record, the trial court concluded defendant should be required to register as a sexual offender during his lifetime. These factors included the significant age difference between defendant and the victim, the victim's particular vulnerability, the use of alcohol to take advantage of the circumstances, violation of a position of trust, and the nature and extent of the sexual misconduct.

DISCUSSION

On September 30, 2009, defendant filed a notice of appeal indicating he wished to challenge the sentence or other matters occurring after the plea. We appointed counsel to represent defendant on appeal. Appointed counsel on appeal has filed a brief under *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth the facts and procedural history, raising no specific issues, and requesting this court to conduct an independent review of the record. On January 28, 2010, we offered defendant an opportunity to file a personal supplemental brief, which he failed to do. We have now concluded our independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

KING
J.